

APPENDIX G

GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT ("Guarantee") is made by Bayer Corporation ("Guarantor"), a corporation organized and existing under the laws of the State of Indiana, with and for the benefit of the United States Environmental Protection Agency ("EPA"). This Guarantee is made on behalf of Bayer Healthcare LLC, which is a wholly-owned subsidiary of Guarantor.

I. BACKGROUND

A. WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9607 *et seq.* ("CERCLA"). Bayer Healthcare LLC (hereinafter "Performing Settling Defendant") is entering into a Consent Decree with the United States on behalf of EPA for performance of certain environmental remediation work at the Himco Dump Site (the "Site") near Elkhart, Indiana;

B. WHEREAS, Guarantor has been provided with a copy of the Consent Decree and has read and is familiar with its terms;

C. WHEREAS, Section XIII of the Consent Decree requires that Performing Settling Defendant provide financial assurance to EPA that funds will be available as and when needed to ensure completion of the work required to be conducted by Performing Settling Defendant under the Consent Decree ("Work");

D. WHEREAS, in order to provide such financial assurance, Performing Settling Defendant has agreed to provide EPA with a guarantee, issued by the Guarantor, of certain of Performing Settling Defendant's obligations under the Consent Decree.

E. WHEREAS, Performing Settling Defendant is a wholly-owned direct subsidiary of Guarantor, and Guarantor will receive substantial benefits from the agreements made by EPA and the Performing Settling Defendant in the Consent Decree;

F. WHEREAS, Guarantor has agreed to guarantee payment in full of the Guaranteed Obligations, as hereinafter defined, and to undertake such other commitments to EPA as are set forth in this Guarantee.

NOW, THEREFORE, in consideration of the promises contained herein, and to induce EPA to settle with Performing Settling Defendant, to enter into the Consent Decree and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor hereby agrees with EPA as follows:

I. GUARANTEE

1. Guaranteed Obligations. Subject to the terms and conditions herein and in the Consent Decree, Guarantor, as primary obligor and not merely as a surety, guarantees to EPA the prompt payment in full of an amount sufficient to assure completion of any and all of Performing Settling Defendants' obligations in the Consent Decree with respect to the Work (the "Guaranteed Obligations") upon the occurrence of a "Work Takeover" as specified in Paragraph 88 of the proposed Consent Decree. At the election of EPA, Guarantor shall, upon written demand from EPA, deposit into the Himco Special Account, in immediately available funds (or other appropriate financing mechanism acceptable to EPA), without set-off, counterclaim or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

2. Obligations Absolute and Unconditional.

a. The obligations of Guarantor hereunder are primary obligations of Guarantor and constitute an unconditional, continuing and irrevocable guarantee of payment of the Guaranteed Obligations which are in no way conditioned on or contingent upon any attempt to enforce in whole or in part Performing Settling Defendants liabilities and obligations to EPA under, subject only to the terms in this Guarantee. Each failure by Guarantor to pay or perform a Guaranteed Obligation hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought as to each cause of action.

b. EPA may, at any time with such consent or notice as may be required by this Guarantee:

(i) change the manner, place and terms of payment of any Guaranteed Obligation upon consent of the Guarantor, or modify, amend or supplement the terms of the Consent Decree with the consent of Performing Settling Defendant, and the guarantees herein shall apply to the Guaranteed Obligations as amended or supplemented.

(ii) settle or compromise any Guaranteed Obligation;

(iii) act or fail to act in any manner which may deprive Guarantor of its right to subrogation against Performing Settling Defendant to recover full indemnity for any payments made pursuant to this Guarantee, or of its right of contribution against any other party.

II. REPRESENTATIONS AND WARRANTIES

3. Guarantor Representations and Warranties. Guarantor represents to EPA that as of the date of this Guarantee, that except as would not have a material adverse effect on the ability of Guarantor to perform its obligations under this Guarantee:

a. Existence. Guarantor is duly organized and validly existing under the laws of the state of its incorporation and is qualified to do business in such jurisdiction and in

each other jurisdiction in which the conduct of its business requires such qualification;

b. Power and Authorization. Guarantor has full power and authority to enter into and execute this Guarantee. This Guarantee constitutes a legal, valid and binding obligation of Guarantor; and

c. No Bankruptcy Filing. Guarantor is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and Guarantor has no knowledge of any person contemplating the filing of any such petition against it.

III. COVENANTS

4. Guarantor hereby covenants and agrees that, until this Guarantee is terminated pursuant to paragraph 14 below:

a. Maintenance of Corporate Existence. Guarantor shall maintain and preserve its existence and all material rights, privileges and franchises necessary in the normal conduct of its business to the extent the failure to do so would have a material adverse effect on the ability of Guarantor to perform its obligations under this Guarantee.

b. Compliance with Laws. Guarantor shall promptly comply, or cause compliance, in all material respects with all legal requirements to the extent any noncompliance with such legal requirements could have a material adverse effect on the ability of Guarantor to perform and discharge its obligations under this Guarantee.

c. Further Assurances. Guarantor shall promptly provide EPA with such information and other documents required in connection with this Guarantee obligation that EPA may reasonably request.

d. Compliance with Financial Measures. Guarantor shall at all times during the term of this Guarantee comply with and satisfy the financial measures and conditions set forth in either Exhibit A or Exhibit B. Guarantor has initially opted to satisfy the conditions set forth in Exhibit B. Guarantor shall also notify EPA immediately if, at any time during the term hereof, Guarantor fails or has reason to believe that it may fail any of the financial measures set forth in Exhibit A or Exhibit B, as the case may be.

e. Submission of Documents. For so long as this Guarantee is in effect, within 90 days after the close of each fiscal year of Guarantor, Guarantor shall submit to EPA:

(i) a letter signed by Guarantor's Chief Financial Officer certifying Guarantor's compliance with the financial conditions and measures set forth in either Exhibit A or Exhibit B, which letter shall be substantially in the form of Exhibit C attached hereto; and

(ii) a copy of Guarantor's audited financial statements for its latest

completed fiscal year, and a copy of the Guarantor's independent certified public accountant's report on examination of such financial statements, which report on examination shall be unqualified or, if qualified, shall have been approved in writing by EPA; and

(iii) a special report from Guarantor's independent certified public accountant to Guarantor attesting to Guarantor's compliance with the financial conditions and measures set forth in either Exhibit A or Exhibit B.

IV. SUBROGRATION.

5. Waiver. (a) Subject to the terms and conditions of this Guarantee, Guarantor hereby waives and relinquishes, to the maximum extent permitted by applicable legal requirements, all rights and remedies accorded to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including but not limited to any defense that may arise by reason of the incapacity, lack of power or authority, dissolution, merger, or termination of any Performing Settling Defendant.

V. EFFECTIVE DATE

6. This Guarantee Agreement shall become effective ten days after entry of the Consent Decree.

VI. MISCELLANEOUS

7. Successions or Assignments. This Guarantee is binding upon Guarantor and its successors and permitted assigns. Guarantor may not assign any of its obligations hereunder without the prior written consent of EPA (and any purported assignment in violation of this Section shall be void), provided that nothing herein shall prohibit or require prior notice to or consent of EPA for any transactions and associated assignments including without limitation any sale of stock or all or substantially all of the assets of Guarantor or any financing transactions or corporate reorganizations to the extent such transactions would not have a material adverse effect on the continued performance by such assignee of the obligations hereunder.

8. Other Waivers. No delay or omission on the part of EPA in exercising any of its rights and no partial or single exercise thereof and no action or non-action by EPA, with or without notice to Guarantor, Performing Settling Defendant, or any other person, shall constitute a waiver of any rights or shall affect or impair this Guarantee.

9. Amendments. This Guarantee may be amended, waived or otherwise modified only with the written consent of the parties hereto, and otherwise in accordance with the terms of the Consent Decree.

10. Jurisdiction. Guarantor agrees that any legal action or proceeding by or against Guarantor or with respect to or arising out of this Guarantee may be brought by the United States in or removed to the United States District Court for the Northern District of Indiana, South

Bend Division. Nothing herein shall affect any right EPA may have to bring legal action or proceedings in any other competent jurisdiction.

11. Integration of Terms. This Guarantee is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms and conditions thereof.

12. Notices. Any notices and other communications between the parties hereto are to be to the following persons:

As to Guarantor: _____

Attention: _____

Telephone: _____

Facsimile: _____

As to EPA:

Director, Superfund Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago IL 60604

With a copy to:

Gwendolyn Massenburg
U.S. EPA, Region 4
77 West Jackson Boulevard, SR-6J
Chicago IL 60604
(312) 886-0983

13. Collection Expenses. If EPA is required to pursue any remedy against Guarantor, Guarantor shall pay to EPA, upon demand, all costs and expenses incurred by EPA in enforcing this Guarantee. Any such costs and expenses shall be deemed to be part of the Guaranteed Obligations.

14. Counterparts. This Guarantee and any amendments or supplements hereto may be executed in counterparts, each of which shall be deemed an original but all such counterparts together shall constitute one and the same agreement.

15. Termination. This Guarantee and all the obligations of Guarantor hereunder shall terminate upon the earlier of (a) payment or performance in full of all of Performing Settling Defendant's obligations under the Consent Decree, and (b) the substitution of a different financial assurance mechanism in accordance with the terms of the Consent Decree.

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have caused this Guarantee Agreement to be duly executed as of the date below, which Guarantee Agreement is to be effective ten days after the date of entry of the Consent Decree.

FOR THE BAYER CORPORATION

Signature of person signing for Bayer

(Date)

(Print Name)

(Title)

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Richard C. Karl
Director, Superfund Division
U.S. EPA, Region 5

(Date)

EXHIBIT A Section 4.5(a) Financial Conditions

As calculated from the data contained in Guarantor's Annual Audited Financial Statement, the Guarantor must: (A) Satisfy two of the following three ratios: (1) a ratio of total liabilities to Net Worth less than 2.0; (2) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and (3) a ratio of current assets to current liabilities greater than 1.5; and (B) Have a Net Working Capital and Tangible Net Worth each at least six times the Total Value of Environmental Obligations; and (C) Have a Tangible Net Worth of at least \$10 million; and (D) Have assets located in the United States amounting to at least 90 percent of total assets or at least six times the Total Value of Environmental Obligations.

Defined Terms for Exhibit A and Exhibit B

"Net Working Capital" means current assets minus current liabilities.

"Net Worth" means total assets minus total liabilities.

"Tangible Net Worth" means the value of tangible assets included in the calculation of Net Worth; this value would not include the value of intangibles such as goodwill and rights to patents or royalties. "Total Value of Environmental Obligations" means the sum of: (a) the dollar amount of financial assurance required by Paragraph [] of the Consent Decree [or the relevant portion if multiple financial assurance mechanisms are being used]; (b) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for CERCLA settlements other than that embodied in the Consent Decree; and (c) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for purposes of any facility regulated under federal environmental programs other than CERCLA, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill ("MSWLF") facilities under 40 CFR part 258, Underground Injection Control ("UIC") facilities under 40 CFR part 144, Underground Storage Tank ("UST") facilities under 40 CFR part 280, and Polychlorinated Biphenyl ("PCB") storage facilities under 40 CFR part 761.

EXHIBIT B Section 4.5(b) Financial Conditions

The Guarantor must have: (A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and (B) Tangible Net Worth at least six times the Total Value of Environmental Obligations; and (C) Tangible Net Worth of at least \$10 million; and (D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the Total Value of Environmental Obligations.

Defined Terms for Exhibit A and Exhibit B

"Net Working Capital" means current assets minus current liabilities.

"Net Worth" means total assets minus total liabilities. "Tangible Net Worth" means the value of tangible assets included in the calculation of Net Worth; this value would not include the value of intangibles such as goodwill and rights to patents or royalties. "Total Value of Environmental Obligations" means the sum of: (a) the dollar amount of financial assurance required by Paragraph [] of the Consent Decree [or the relevant portion if multiple financial assurance mechanisms are being used]; (b) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for CERCLA settlements other than that embodied in the Consent Decree; and (c) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for purposes of any facility regulated under federal environmental programs other than CERCLA, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill ("MSWLF") facilities under 40 CFR part 258, Underground Injection Control ("UIC") facilities under 40 CFR part 144, Underground Storage Tank ("UST") facilities under 40 CFR part 280, and Polychlorinated Biphenyl ("PCB") storage facilities under 40 CFR part 761.

EXHIBIT C Form CFO Letter